

HOUSE BILL NO. 724

INTRODUCED BY J. SINRUD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE POWERS AND DUTIES OF LOCAL BOARDS OF HEALTH TO GIVE THOSE BOARDS ONLY THE POWER AND DUTY TO MAKE RECOMMENDATIONS FOR HEALTH-RELATED REGULATIONS TO COUNTY, CITY, OR CONSOLIDATED CITY-COUNTY GOVERNMENTS; PROHIBITING LOCAL BOARDS FROM ADOPTING REGULATIONS EXCEPT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-31-4101, 50-2-101, 50-2-116, 50-2-118, 50-2-130, 50-50-103, 75-5-305, 75-10-112, AND 81-23-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-31-4101, MCA, is amended to read:

"7-31-4101. Board of health. The city or town council has power to provide for a board of health and to prescribe its powers and duties, ~~and, when such~~ If a board of health is provided established, for the same to have board has jurisdiction within the city or town limits and within 3 miles thereof of the limits. However, in accordance with 50-2-116, a city or town council may not require or authorize a board of health to adopt regulations or ordinances."

Section 2. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(4) "Institutional control" means a legal or regulatory mechanism designed to protect public health and safety or the environment that:

(a) limits access to or limits or conditions the use of environmentally contaminated property or media;

(b) provides for the protection or preservation of environmental cleanup measures; or

(c) informs the public that property is or may be environmentally impaired or that there are limitations on the access to or use of environmentally contaminated properties or media.

(5) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(6) "Local board" means a county, city, city-county, or district board of health.

(7) "Local government" means a city, county, or consolidated city-county government.

~~(7)~~(8) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

~~(8)~~(9) "Physician" means a physician legally authorized to practice medicine in this state.

~~(9)~~(10) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to prevent or limit the transmission of the communicable disease to nonquarantined individuals."

Section 3. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards -- prohibition against adoption of regulations -- exception. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;
- (f) supervise destruction and removal of all sources of filth that cause disease;
- (g) guard against the introduction of communicable disease;
- (h) supervise inspections of public establishments for sanitary conditions;
- (i) subject to the provisions of 50-2-130, ~~adopt~~ and in accordance with subsection (3) of this section, recommend the adoption of necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.
- (2) Local boards may:
- (a) ~~adopt in accordance with subsection (3), recommend the adoption of~~ and enforce isolation and quarantine measures to prevent the spread of communicable diseases;
- (b) furnish treatment for persons who have communicable diseases;
- (c) in accordance with subsection (3), recommend regulations or take any other action necessary to prohibit the use of places that are infected with communicable diseases;
- (d) in accordance with subsection (3), recommend regulations to require and provide means for disinfecting places that are infected with communicable diseases;
- (e) accept and spend funds received from a federal agency, the state, a school district, or other persons;
- (f) contract with another local board for all or a part of local health services;
- (g) reimburse local health officers for necessary expenses incurred in official duties;
- (h) ~~abate~~ in accordance with subsection (3), recommend regulations and take other action necessary for the abatement of nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;
- (i) ~~adopt~~ in accordance with subsection (3), recommend the adoption of necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.
- (j) ~~adopt~~ in accordance with subsection (3), recommend the adoption of rules that do not conflict with rules adopted by the department:

- (i) for the control of communicable diseases;
- (ii) for the removal of filth that might cause disease or adversely affect public health;
- (iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;
- (iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives;
- (v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and
- (vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.
- (k) adopt in accordance with subsection (3), recommend the adoption of regulations for the establishment of institutional controls that have been selected or approved by the:
- (i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or
- (ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7.
- (3) Except as allowed by this subsection, a local board of health may not adopt a regulation on a subject within its jurisdiction but may recommend the adoption of a regulation to the local government body or bodies with general legislative jurisdiction over the area for which the board serves as the local board. A local board may adopt regulations only if the board serves as the local government body with general legislative jurisdiction within an area for which the board serves as the local board. A local government body to which the local board's recommendation is made may adopt the regulation recommended by the local board."

Section 4. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

- (a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth that might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) to the department;

(g) establish and maintain quarantine and isolation measures as enacted by ~~the~~ a local board of health government;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of the local health officer's appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by ~~the~~ a local board government or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 and 57 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician may not act as a physician to anyone."

Section 5. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) ~~After April 14, 1995, except~~ Except as provided in subsections (2) through (4) of this section or unless required by state law, the local board may not ~~adopt~~ recommend the adoption, pursuant to 50-2-116(3), of a rule under

1 50-2-116(1)(i), (2)(j)(iii), or (2)(j)(v) and a local government may not adopt a rule under 50-2-116(1)(i), (2)(j)(iii),
2 or (2)(j)(v) that is more stringent than the comparable state regulations or guidelines that address the same
3 circumstances. The local ~~board~~ government may incorporate by reference comparable state regulations or
4 guidelines.

5 (2) The local ~~board~~ government may adopt a rule to implement 50-2-116(1)(i), (2)(j)(iii), or (2)(j)(v) that
6 is more stringent than comparable state regulations or guidelines only if the local board makes a written finding,
7 after a public hearing and public comment and based on evidence in the record, that:

8 (a) the proposed local standard or requirement protects public health or the environment; and

9 (b) the local ~~board~~ government standard or requirement to be imposed can mitigate harm to the public
10 health or environment and is achievable under current technology.

11 (3) The written finding must reference information and peer-reviewed scientific studies contained in the
12 record that forms the basis for the local board's conclusion. The written finding must also include information
13 from the hearing record regarding the costs to the regulated community that are directly attributable to the
14 proposed local standard or requirement.

15 (4) (a) A person affected by a rule of the local board ~~adopted after January 1, 1990, and before April~~
16 ~~14, 1995, that that~~ the person believes to be more stringent than comparable state regulations or guidelines may
17 petition the local ~~board~~ government with jurisdiction to review the rule. If the local ~~board~~ government determines
18 that the rule is more stringent than comparable state regulations or guidelines, the local ~~board~~ government shall
19 comply with this section by either revising the rule to conform to the state regulations or guidelines or making
20 the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12
21 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to
22 comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed
23 \$250.

24 (b) A person may also petition the local ~~board~~ government with jurisdiction for a rule review under
25 subsection (4)(a) if the local ~~board~~ government adopts a rule after January 1, 1990, in an area in which no state
26 regulations or guidelines existed and the state government subsequently establishes comparable regulations
27 or guidelines that are less stringent than the previously adopted local ~~board~~ government rule."
28

29 **Section 6.** Section 50-50-103, MCA, is amended to read:

30 **"50-50-103. Department authorized to adopt rules -- advisory council.** (1) To protect public health,

1 the department may adopt rules relating to the operation of establishments defined in 50-50-102, including
2 coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and
3 fixtures, and housekeeping.

4 (2) (a) The department and local ~~health authorities~~ governments may not adopt rules prohibiting the sale
5 of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

6 (b) The department and local ~~health authorities~~ governments may not require that foods sold pursuant
7 to this subsection (2) be prepared in certified or commercial kitchens.

8 (3) The department shall use a food safety task force or advisory council to assist in the development
9 of administrative rules or proposed legislation. The task force or advisory council must be composed of equal
10 numbers of representatives of the food establishments and representatives of state and local government.
11 Administrative rules and any legislation to be proposed by the department must be presented to the task force
12 or advisory council prior to its proposal or introduction."
13

14 **Section 7.** Section 75-5-305, MCA, is amended to read:

15 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

16 (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal
17 government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR,
18 chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal
19 government has not adopted minimum treatment requirements for a particular industry or activity, the board may
20 do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are
21 cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based
22 treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required
23 to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted
24 pursuant to 75-5-301.

25 (2) The board shall establish minimum requirements for the control and disposal of sewage from private
26 and public buildings, including standards and procedures for variances from the requirements.

27 (3) An applicant for a variance from minimum requirements adopted by a local ~~board of health~~
28 government pursuant to 50-2-116(1)(i) and (3) may appeal the local ~~board of health's~~ government's final decision
29 to adopt the requirements to the department by submitting a written request for a hearing within 30 days after
30 the decision. The written request must describe the activity for which the variance is requested, include copies

of all documents submitted to the local ~~board of health~~ government in support of the variance, and specify the reasons for the appeal of the local ~~board of health's~~ final decision to adopt the requirements.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7.

(6) For the purposes of this section, "local government" means a city, county, or consolidated city-county government."

Section 8. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) ~~enforce its rules and the rules of the department or a local board of health~~ enforce its rules and the rules of the department pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste

1 management system;

2 (10) subject to 15-10-420, finance a solid waste management system through the assessment of a tax
3 as authorized by state law;

4 (11) sell on an installment sales contract or lease to a person all or a portion of a solid waste
5 management system that the local government plans, designs, or constructs for the consideration and upon the
6 terms established by the local governments and consistent with the loan requirements set forth in this part and
7 rules adopted to implement this part;

8 (12) procure insurance against any loss in connection with property, assets, or activities;

9 (13) mortgage or otherwise encumber all or a portion of a solid waste management system when the
10 local government finds that the action is necessary to implement the purposes of this part, as long as the action
11 is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

12 (14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or
13 alter the property by making improvements or betterments for the purpose of enhancing the value and
14 usefulness of the property;

15 (15) finance, design, construct, own, and operate a solid waste management system or contract for any
16 or all of the powers authorized under this part;

17 (16) control the disposition of solid waste generated within the jurisdiction of a local government;

18 (17) enter into long-term contracts with local governments and private entities for:

19 (a) financing, designing, constructing, and operating a solid waste management system;

20 (b) marketing all raw or processed material recovered from solid waste;

21 (c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

22 (18) finance an areawide solid waste management system through the use of any of the sources of
23 revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by
24 the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

25 (19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this
26 part;

27 (20) regulate the siting and operation of container sites."
28

29 **Section 9.** Section 81-23-103, MCA, is amended to read:

30 **"81-23-103. General powers of department.** (1) The department shall supervise, regulate, and control

1 the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold
2 for consumption in this state. This chapter does not affect the status, force, or operation of any provision of public
3 health laws, county ~~board of health~~ rules, or municipal ordinances for the promotion or protection of the public
4 health. The department may cooperate with the department of public health and human services, a county or
5 city board of health, or the department of agriculture in enforcing this chapter.

6 (2) The department shall investigate all matters pertaining to the production, processing, storage,
7 distribution, and sale of milk in this state and shall conduct hearings on any subject pertinent to the
8 administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts,
9 and any other person from whom information may be desired or considered necessary to carry out the purposes
10 and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the
11 state or who cannot otherwise appear in person before the department at its offices. The department shall give
12 at least 10 days' notice to the proposed witness."

13
14 NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured,
15 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

16 - END -